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OFFICE OF PETITIONS

In re Application	:
Jonathon Michael Blackburn et al.	:
Application No. 09/967,321	: DECISION ON APPLICATION
Filed: October 1, 2001	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 2010_0871	:

This is in response to the APPLICATION FOR ADJUSTMENT OF PATENT TERM UNDER 37 C.F.R. § 1.705(b) filed February 16, 2010. Applicant requests that the determination of patent term adjustment be corrected from 0 days to 110 days.

The petition is **DISMISSED**.

On November 16, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On February 16, 2010, applicant timely submitted the instant application for patent term adjustment¹. Applicant maintains an additional period of adjustment in the amount of 124 days should be entered for a total of 604 days under 37 C.F.R. § 1.703(a). Applicant argues that the Office mailed a first Office action on March 25, 2004 and then mailed a restriction requirement on July 27, 2004 which replaced the first action mailed March 25, 2004, in effect withdrawing the first action, and as such, applicants are requesting 124 more days, 1.704(a)(1).

Applicant states that the above-identified application is not subject to a terminal disclaimer.

Applicant's argument has been considered, but not found persuasive. An Office Action was mailed on March 25, 2004, thereafter, a second Office Action was mailed on July 27, 2004. The mailing of a second Office action withdrawing the first action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on March 25, 2004. Accordingly, entry of an additional period of adjustment of 124 days for Office delay in mailing a further notification is not warranted.

¹ PALM records indicate that the issue fee was also paid on February 16, 2010.

The Office acknowledges the authorization to charge the \$200.00 fee set forth in 37 CFR 1.18(e) to deposit account no. 50-0311.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Anthony Knight
Director
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